IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

**APPEAL FROM ORDER NO.154 OF 1999**
IN
L.C. SUIT NO.4804 OF 1998

Shaikh Abdul Gafur
Dargah Building, Room No.2,
Mavji Rathod Road,
Mumbai - 400 009 ... Appellant

V/s.

1. The Municipal Corporation
of Greater Bombay, having its
office at Mahapalika Marg, Fort
Mumbai - 400 001

2. Abdul Kader
Meher Bux Compound, Drum Factory
Dr.Maheshwari Road, Mumbai-9 ... Respondent

Mr.S.G. Kudle for Appellant
Mr.A.C. Singh for Respondent No.1
Mr.J. Xavier for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 15, 2004**

**ORAL JUDGMENT:**

. The plaintiff has challenged the order of the trial Court returning the plaint as the City Civil Court had no pecuniary jurisdiction to try and entertain the suit. The order which has been passed under Order 7 Rule 10 of Civil Procedure Code has been challenged in the present Appeal from Order. The case of the appellant is that certain property taxes were to be paid in respect of a building which was in his possession.

The appellant was unable to pay these taxes. It appears that since these taxes were not paid by the appellants, the Corporation, after following the procedure contained in the Mumbai Municipal Corporation Act auctioned the Appellant's property. The highest bid of Rs.130,000/- was accepted by the Corporation, the lowest being of Rs.50,000/-. The appellant has filed a suit claiming the following reliefs:

(a) That it be declared that the Defendants and all persons acting through on behalf of them, have no right to interfere, disturb or obstruct with the right, title and interest and possession of the property and not to enter into the suit property, and not to disturb the tenants, occupants in the said property and also not to collect any rent or compensation from any of the occupants and further declare that the documents, if any, of the alleged BID declared by the Defendant No.1 in favour of the Defendant No.2 as null and void, illegal, unjustified and not binding upon the Plaintiff and the same be set aside and quashed forthwith and the Defendants have acted high-handedly and therefore, all actions of the Defendants be declared as null and void and set aside any declaration or order made by them in respect of the suit property, i.e., being the Building having C.T.S. No.2054, Mandvi Division, consisting of 18 Rooms under Assessment No.4262 (4), situated at and known as Dargah Building, Mavji Rathod Road, Mumbai - 400 009;

(b) That the Defendants, their agents, servants, Officers, representatives and all persons acting through and on behalf of them be permanently restrained by an order and Injunction of this Hon'ble Court from interfering, disturbing, obstructing and creating hindrance and entering into the suit property, collecting rent or compensation and/or disturbing the occupants and in any disturbing or affecting adversely the right, title and interest of the Plaintiff in the suit building and from obstructing the

Plaintiff, occupying, possessing, collecting rents, from the occupants in the suit premises i.e., being the Building having C.T.S. No.2054 of Mandvi Division, consisting of 18 Rooms under Assessment NO.4262 (4) situated at and known as Dargah Building, Mavji Rathod Road, Mumbai - 400 009;

(c) That this Hon'ble Court be pleased to stay the operation of the any declaration or Bid concluded in favour of the Defendant No.2, in respect of the suit property, i.e., being the Building having C.T.S. No.2054 Mandvi Division, consisting of 18 rooms under Assessment No.4262 (4), situated at and known as Dargah Building, Mavji Rathod Road, Mumbai - 400 009;

(d) That interim and ad-interim reliefs in terms of prayer (b) above be granted;

(e) For such other and further reliefs as the nature and circumstances of the case may require be granted."

2. The trial Court has found that these prayers indicate that the appellant was in fact challenging the auction purchase and not merely seeking a declaration and injunction for which the provisions of section 6(iv)(j) of the Bombay Court Fees Act are applicable. The trial Court has considered the prayers and reliefs sought in the plaint and has come to the conclusion that the provisions of section 6(iv)(h-a) would cover the present suit and, therefore, had awarded Court fees payable on the value of property.

3. Mr.Kudle, appearing for the appellant, submits that what was challenged in the suit was the high-handed action of the Corporation in issuing the auction notice

and not merely the auction purchase. He submits that the very fact that the auction was without notice to the appellant shows the high-handedness of the Corporation. This action of the Corporation was void according to the learned Advocate and therefore an injunction was sought against the Corporation from accepting bids.

4. Mr.Singh, learned Advocate appearing for Respondent No.1, submits that what has been challenged is in fact the bid itself and the documents entered into by the Corporation. Merely challenging and obtaining a declaration that the documents were void, would not give any relief to the plaintiff. He submits that the bid itself has been challenged and, therefore, the trial Court has held that the suit is covered by the provisions of section 6(iv)(h-a).

5. Mr.Xavier, learned Advocate appearing for Respondent No.2, adopts the submissions of Mr.Singh.

6. On a plain reading of the plaint and the prayers therein, it would be clear that the plaintiff was in fact taking exception to the auction held by the Corporation to recover the taxes which were payable by the plaintiff. It is because the plaintiff had failed and neglected to pay property taxes that an auction was held and the highest bid of Rs.130,000/- had been

accepted. The plaintiff had in his prayers sought a declaration that the documents of the alleged bid be declared null and void. Obviously this would mean that what was being sought by the plaintiff was a prayer for declaration that the auction bid and auction purchase were void. Therefore, the provisions of section 6(iv)(h-a) would be applicable.

7. The provisions of section 6(iv)(j) are applicable only when a declaration or other consequential reliefs sought are not susceptible of monetary evaluation. In the present case, it cannot be said that the declaration sought was not susceptible of monetary evaluation.

8. The trial Court has considered the provisions correctly and I see no reason to interfere with the finding of the trial Court. There is no doubt had the suit been valued correctly it would not fall within the pecuniary jurisdiction of the City Civil Court.

9. The appeal is, therefore, dismissed. No order as to costs. At the request of the learned Advocate for the Appellant, the ad-interim relief granted on 4.3.1999 is continued for a further period of eight weeks from today in order to enable the Appellant to pursue his remedy before the appropriate forum.

11. Parties be provided an authenticated copy of this order.